



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Served: February 20, 1998

Issued by the Department of Transportation
on the 20th day of February, 1998

Joint Application of

AMERICAN AIRLINES, INC.
and
LINEA AEREA NACIONAL CHILE, S.A.
(LAN CHILE)

under 49 U.S.C. Sections 41308 and 41309 for
approval of and antitrust immunity for alliance
agreement

Docket OST-97-3285 -16

Application of

LINEA AEREA NACIONAL CHILE, S.A.
(LAN CHILE)

for an exemption under 49 U.S.C. Section 40109

Docket OST-97-2982 -14

Joint Application of

AMERICAN AIRLINES, INC. and
LINEA AEREA NACIONAL CHILE, S.A.
(LAN CHILE)

for a statement of authorization under 14 C.F.R.
Parts 207 and 212 (reciprocal code-share services)

Undocketed

**ORDER CONSOLIDATING PROCEEDINGS AND
ESTABLISHING PROCEDURAL SCHEDULE**

Summary

By this order, we consolidate into Docket OST-97-3285 the Linea Aerea Nacional Chile, S.A. ("Lan Chile") application for an exemption filed in Docket OST-97-2982, and the undocketed joint application filed by American Airlines, Inc. ("American") and Lan Chile for a statement of authorization to conduct code-share services. We also establish procedural dates in Docket OST-97-3285 for the filing of responsive pleadings. Finally, we are providing to counsel and outside experts for interested parties in this proceeding interim access to the confidential information filed

in the **American-TACA** Group case (Docket OST-96-1700), subject to certain affidavit procedures and requirements.

Discussion

On October 7, 1997, Docket OST-97-2982, Lan Chile filed an application for an exemption authorizing it to engage in foreign air transportation of persons, property and mail between points in Chile and the U.S. coterminal points Chicago, Houston, Orlando, and San Juan, via intermediate points.¹ Concurrently, American and Lan Chile filed a joint application for a statement of authorization to engage in certain reciprocal code-sharing services.²

On December 23, 1997, Docket OST-97-3285, American and Lan Chile filed a joint application for approval of and antitrust immunity for an Alliance Agreement, whereby they would plan and coordinate service over their respective route networks as if there had been an operational merger between the two airlines. Concurrently, the Joint Applicants filed a joint motion under 14 C.F.R. 302.39 of our regulations requesting confidential treatment for certain evidentiary **material**.³

By Order 98-1-21, issued January 22, 1998, the Department noted, among other things, that the Joint Applicants had submitted several evidentiary documents with portions redacted based on claims of irrelevancy to the proceeding under DOT precedent. The Department directed the Joint Applicants to submit complete copies of the redacted documents for *in camera* review. On February 3, 1998, the Department determined, based on our review of those materials, that certain materials were relevant to our public interest assessment of the merits of the pending joint application and directed the Joint Applicants to file the materials in this docket.⁴ On February 12, 1998, the Joint Applicants filed the supplemental information?

¹ By Notice dated November 4, 1997, the Department granted Lan Chile's request to serve Orlando, Florida. The authority was granted for one year.

² On October 22, 1997, Continental Airlines, Inc., Delta Air Lines, Inc., and United Air Lines, Inc. filed in opposition to the requests for exemption and statement of authorization. The Government of Puerto Rico filed in support of the applications.

³ By Notice dated January 9, 1998, we granted immediate interim access to all documents covered by the Rule 39 Motion to counsel and outside experts for interested parties, in accordance with our confidential affidavit procedures. At that time, finding the evidentiary record of this case incomplete, we stated that we would establish an appropriate procedural schedule by subsequent order or notice.

⁴ See Notice dated February 12, 1998.

⁵ The Joint Applicants requested confidential treatment for these materials under Rule 39 of our regulations. In our Notice dated January 9, while stating that we would rule on the merits of any Rule 39 Motions by subsequent order, we granted interim access to any subsequent materials filed confidentially in this docket to counsel and outside experts for interested parties who file appropriate affidavits with the Department in advance, unless the party filing the Rule 39 Motion objected.

Decision

In the interest of administrative efficiency, we have decided to consolidate into Docket OST-97-3285 the captioned Lan Chile application for exemption authority, and the joint application of American and Lan Chile for a statement of authorization for reciprocal code-share services. In addition, we have reviewed the Joint Applicants' supplemental information filed in Docket OST-97-3285, and have determined that, with the availability of certain other information as discussed below, the record in this case is substantially complete.⁶ Therefore, we are establishing dates for comments and reply comments to the applications in this consolidated docket.

As an initial matter, the commenting parties in Docket OST-97-2982 requested that the Department require American and Lan Chile to file information on the full extent of their planned alliance, as well as information on the interrelationship of that alliance with other code share and alliance arrangements proposed by American in Central and South America markets. Several commenters also requested an oral **evidentiary** hearing on these issues. The information on the planned American-Lan Chile alliance was subsequently filed with the request for antitrust immunity in Docket OST-97-3285, and this information was also made available to the parties in the American-TACA proceeding, Docket OST-96-1700.⁷ While the information filed in the American-Lan Chile case (Docket OST-97-3285) includes descriptions of American's other existing (*i.e.*, approved) code-share arrangements, the information on its planned arrangements with Aerolineas Argentinas, Austral **Lineas** Aereas S.A. (a regional **affiliate** of Aerolineas Argentinas), and Iberia, **Lineas** Aereas de Espana, S .A., as well as with the TACA Group, has only been filed in the American-TACA Group proceeding (Docket OST-96-1700). We will therefore incorporate by reference the confidential information that is part of the American-TACA Group case (Docket OST-96-1700) and make the confidential information filed in the American-TACA Group case (Docket OST-96-1700) available on an interim basis to counsel and outside experts for parties in this proceeding, subject to the affidavit procedures and requirements established in the Notice of January 27, 1998, as set forth below. We expect that this additional information should permit interested parties and the Department to consider the possible interrelationships among American's various existing and proposed alliances as they relate to the issues in this proceeding. Finally, with respect to the requests for an oral evidentiary hearing in Docket OST-97-2982, we have no evidence or persuasive arguments that such procedures are necessary to resolve material issues of fact in this proceeding.

We expect all **affidavits** to state, at a minimum, that (1) the affiant is counsel for an interested party or an outside independent expert providing services to such a party in the American-Lan Chile case; (2) the **affiant** will use the information only for the purpose of participating in the American-Lan Chile case; and (3) the **affiant** will disclose such information only to other individuals who have filed valid affidavits. **Affiants** and interested parties must understand and agree that any pleading or other filing in the American-Lan Chile case that includes or discusses

⁶ We reserve the right, however, to require the filing of additional information deemed relevant to the proceeding at any time.

⁷ Notice dated January 27, 1998, in Dockets OST-96-1700 and OST-97-3285.

confidentially-filed information in the American-TACA Group case must itself be accompanied by a Rule 39 motion requesting confidential treatment. Affidavits must be filed in Docket OST-96-1700 with the **Department** of Transportation, Dockets, Room PL-401, 400 Seventh Street, S. W., Washington, D.C., 20590.

Accordingly:

1. We consolidate (1) the application for exemption of **Linea Aerea Nacional Chile, S.A.**, in Docket OST-97-2982, and (2) the undocketed joint application for a statement of authorization of American Airlines, Inc. and **Linea Aerea Nacional Chile, S.A.** into Docket OST-97-3285;
2. We grant to counsel and outside experts for the interested parties in Docket OST-97-3285 immediate interim access to all confidential materials filed in Docket **OST-96-1700**, subject to the procedures and restrictions, as appropriately modified, set forth in the Department's Notice of January 27, 1998 in both dockets;
3. We direct interested parties to file comments in Docket OST-97-3285 no later than 21 days from the date that this order is served, and replies shall be filed no later than 7 business days after the last day for filing answers; and
4. We will serve this order on all interested parties.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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<http://dms.dot.gov/general/orders/aviation.html>*